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PTC-02-20220304-01

March 4<sup>th</sup>, 2022

The Registrar,  
National Electric Power Regulatory Authority,  
NEPRA Tower, Ataturk Avenue-East G-5/1,  
Islamabad.

For info & n. c. p. 2  
- Adell Dir-I  
lop & to  
- ADG (C7)  
- Cons. (Tech)  
- SA (M8E) - m. f.  
cr. Chairman  
✓ 8/3/22 - v. c. / M (M8E)  
- m (CDA/T)  
- m (C6E)

**SUBJECT: PETITION FOR MODIFICATION OF TARIFF DETERMINATION DATED DECEMBER 04, 2018**

Dear Sir,

This is with reference to National Electric Power Regulatory Authority's ("NEPRA" or the "Authority") determination dated December 04, 2018, bearing reference No. NEPRA/TRF-433/PMTC-2018/18834-18836 ("Reference Tariff") in the matter of Pak Matiari-Lahore Transmission Company (Private) Limited's (the "Company") ±660 kV High Voltage Direct Current 4,000 MW transmission line project ("Project").

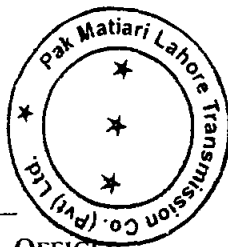
The Company submits that: (i) the Reference Tariff provides for a bi-annual indexation of principal and interest tariff components of foreign currency loan ("Tariff Components") on account of variations in PKR/USD exchange rate; and (ii) the bi-annual adjustment of Tariff Components does not allow the Company to recover the costs prudently incurred, particularly in light of the PKR/USD exchange rate volatility. The Company, therefore, prays that the Reference Tariff be modified to allow for the Tariff Components to be indexed on account of PKR/USD exchange rate on a quarterly basis.

In view thereof, this petition for modification of Reference Tariff is being filed pursuant to Sections 7 and 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, read with Rule 3 of the NEPRA (Tariff Standards and Procedure) Rules, 1998, and all other enabling provisions of the law, duly supported with all the relevant documents.

We look forward for the Authority's early determination on the subject matter.

Yours truly,

MR. WANG BO



CHIEF FINANCIAL OFFICER

FOR & ON BEHALF OF PAK MATIARI-LAHORE TRANSMISSION COMPANY (PRIVATE) LIMITED

Enclosures: (i) Modification Tariff Petition; (ii) Board of Director's Resolution; (iii) Affidavit; (iv) Annexures A to F.

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REGISTRAR  
Dy. No.: 2358  
Dated: 08/3/22

Annex A

**BEFORE THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**

**IN THE MATTER OF**

TARIFF DETERMINATION IN CASE NO. NEPRA/TRF-433/PMTC-2018/18834-18836 DATED DECEMBER 04, 2018 FOR PAK MATIARI-LAHORE TRANSMISSION COMPANY (PRIVATE) LIMITED'S  $\pm 660$  KV 4,000 MW HVDC TRANSMISSION LINE PROJECT FROM MATIARI, SINDH TO LAHORE, PUNJAB

PETITION FOR MODIFICATION OF TARIFF DETERMINATION DATED DECEMBER 04, 2018 UNDER SECTIONS 7 AND 31 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1977, RULE 3 OF THE NEPRA (TARIFF STANDARDS & PROCEDURE) RULES, 1998, AND THE ENABLING PROVISIONS OF LAW

**ON BEHALF OF**

**PAK MATIARI-LAHORE TRANSMISSION COMPANY (PRIVATE) LIMITED**

DATED: MARCH 4<sup>TH</sup>, 2022

**PAK MATIARI-LAHORE TRANSMISSION COMPANY (PRIVATE) LIMITED**  
ADDRESS: House No. 177-A, Street No. 6, Phase-1, DHA, Lahore, Pakistan  
EMAIL: [pakmltc@hotmail.com](mailto:pakmltc@hotmail.com)  
PHONE: 042-35746855/65  
FAX: 042-35746869



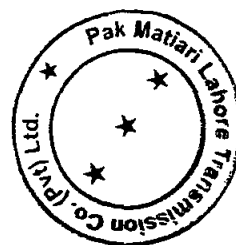
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## DETAILS OF PETITIONER

### 1.1. NAME AND ADDRESS

Petitioner: Pak Matiari-Lahore Transmission Company (Private) Limited ("PMLTC" or the "Company")  
Address: House No. 177-A, Street No. 6, Phase-I, DHA, Lahore, Pakistan  
Email: pakmltc@hotmail.com  
Phone: 042-35746855/65  
Fax: 042-35746869

### 1.2. AUTHORIZED REPRESENTATIVE OF PMLTC

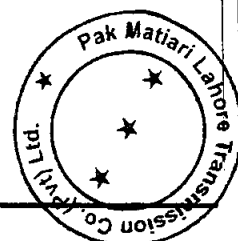
Name: Mr. Wang Bo  
Designation: Chief Financial Officer

## 2. GROUND FOR TARIFF MODIFICATION

### 2.1. SUMMARY AND BACKGROUND

- 2.1.1. PMLTC is a private limited company incorporated under the laws of Pakistan. on September 16, 2015, with its registered office located at the address mentioned in Section 1.1 above. PMLTC has undertaken the development of Pakistan's first  $\pm 660$ kV High Voltage Direct Current transmission line project (the "Project"), pursuant to the Policy Framework for Private Sector Transmission Line Project, 2015 (the "Transmission Policy"), as an independent transmission company under the early-harvest projects of the China Pakistan Economic Corridor ("CPEC") framework.
- 2.1.2. The Project is planned to realize bipolar operation with a power transmission capacity of 4,000 MW, over a line length of about 886 km from the sending end at Matiari Converter Station, Sindh to the receiving end at Lahore Converter Station, Punjab.
- 2.1.3. To undertake the Project, the National Electric Power Regulatory Authority (the "Authority" or "NEPRA") granted a special purpose transmission license for PMLTC's Project on February 19, 2018, bearing license No. SPTL/03/2018 ("Transmission License").

*Copy of the Transmission License issued by the Authority has been enclosed herewith as "Annexure A".*



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## 2. PMLTC'S TARIFF DETERMINATIONS

- 2.2.1. The Private Power and Infrastructure Board ("PPIB") filed a tariff petition dated February 08, 2016, bearing reference no. 6(618)PPIB/UT/ TLP/FIN/0-45933 ("**Tariff Petition**") for approval of levelized transmission tariff for the Project. Pursuant to the Tariff Petition, the Authority initiated the proceedings under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("**NEPRA Act**") and NEPRA (Tariff Standards and Procedure) Rules, 1998 ("**NEPRA Tariff Rules**") and issued tariff determination dated August 18, 2016, bearing reference No. NEPRA/TRF-351/PPIB-2016 /11318-11321, for the Project ("**Initial Tariff Determination**"). As per the Initial Tariff Determination, the Authority approved reference transmission tariff for the Project and approved the Project costs along with relevant indexations, as stated by PPIB in its Tariff Petition.

*Copy of Initial Tariff Determination has been enclosed herewith as "Annexure B".*

- 2.2.2. Subsequently, PPIB filed a Motion for Leave for Review dated September 02, 2016, bearing reference No. 6(618)PPIB/TLP/FIN/0-47405, against the Initial Tariff Determination ("**MFLR Petition**") wherein PPIB sought review of various Project cost components as determined by the Authority in the Initial Tariff Determination. Based on the MFLR Petition, the Initial Tariff Determination was reviewed and various components of Project costs were revised by the Authority through its decision dated November 24, 2016, bearing reference No. NEPRA/TRF-351/PPIB-2016/15960-15962 ("**Tariff Determination Against Review Petition**").

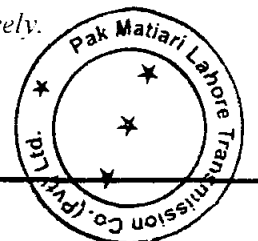
*Copy of Tariff Determination Against Review Petition has been enclosed herewith as "Annexure C".*

- 2.2.3. Thereafter, pursuant to the Company's application dated April 07, 2017, requesting the Authority to grant the Project tariff as per the terms of Tariff Determination Against Review Petition, the Authority vide its determination dated May 04, 2017, bearing reference No. NEPRA/TRF-384/PMTC-2017/6223-6225, granted, *inter alia*, relevant adjustments/indexations therein to PMLTC ("**Final Tariff Determination**").

*Copy of the Final Tariff Determination has been enclosed herewith as "Annexure D".*

- 2.2.4. Subsequently, vide its letter dated January 15, 2018, bearing reference No. NEPRA/TRF-433/PMTC-2018, PMLTC submitted a modification tariff petition under Rule 3(1) of NEPRA Tariff Rules for modification of the Final Tariff Determination ("**Modification Tariff Petition**") due to certain developments and requirements on account of reallocation of operations and maintenance cost. The Authority approved the Modification Tariff Petition and revised the reference tariff for the Project vide its determination dated March 08, 2018, bearing reference No. NEPRA/TRF-433/PMTC-2018/3691-3693 ("**Modified Final Tariff Determination**"). Later, the Modified Final Tariff Determination was amended due to typographical errors by the Authority vide its determination dated December 04, 2018, bearing reference No. NEPRA/TRF-433/PMTC-2018/18834-18836 ("**PMLTC Final Tariff Determination**").

*Copies of the Modified Final Tariff Determination and PMLTC Final Tariff Determination have been enclosed herewith as "Annexure E" and "Annexure F", respectively.*



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(The Initial Tariff Determination, the Tariff Determination Against Review Petition, the Modified Final Tariff Determination, and PMLTC Final Tariff Determination are herein collectively referred to as "**PMLTC Tariff Determinations**").

## 2.3. BASIS OF INSTANT MODIFICATION PETITION

2.3.1. The Company is filing this Instant Modification Petition under Section 31 (*Tariff*) of the NEPRA Act, read with Rule 3 (*Filing of petitions and communications*) of the NEPRA Tariff Rules, and all other enabling provisions of the law. Particularly, Rule 3 (*Filing of petitions and communications*) of the NEPRA Tariff Rules provides that "*any licensee, consumer or person*" interested in the tariff may file a petition with the Authority. Therefore, the Company has the locus standi to file the Instant Modification Petition before the Authority seeking modification in PMLTC Final Tariff Determination, as further explained in Part 3 (*Facts and Grounds for Instant Modification Petition*) below.

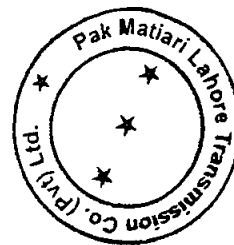
2.3.2. By way of background, the Company submits that:

- (i) PPIB stated at the Tariff Petition stage that "*interest rate variations and exchange rate variations for debt servicing will be made on 1<sup>st</sup> July and 1<sup>st</sup> January*";
- (ii) Paragraph 14.5 (*Debt Principal Repayments – Foreign Currency Loans*) of the Tariff Petition stated: "*The Principal Component of Foreign Currency Loan shall be, on a semi-annual basis, indexed against the USD/PKR exchange rate, based on the revised IT & OD selling rate of USD/PKR notified by the National Bank of Pakistan*"; and
- (iii) Paragraph 14.6 (*Debt Interest Payments – Foreign Currency Loans*) of the Tariff Petition stated that: "*The Interest Component of Foreign Currency Loan shall be on a semi-annual basis indexed against the relevant LIBOR variations and against the USD/PKR exchange rate*".

2.3.3. Accordingly, the Authority allowed indexation of debt principal tariff component and interest tariff component ("**Tariff Components**") on a semi-annual basis, as per the PMLTC Tariff Determinations.

2.3.4. However, due to consistent variations in the exchange rate and steep devaluation of Pakistani Rupee ("**PKR**") against the United States Dollars ("**USD**") over the last few years, the Company is filing the instant tariff modification petition ("**Instant Modification Petition**") and requests the Authority to allow indexation of Tariff Components on account of PKR/USD exchange rate on a quarterly basis.

2.3.5. The information required to be provided under Rule 3 (*Filing of petitions and communications*) of the NEPRA Tariff Rules is annexed herewith as Annexures A to D. The Company reserves the right to supplement the Instant Modification Petition with further grounds, information, clarifications and interpretations.



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## FACTS AND GROUNDS FOR INSTANT MODIFICATION PETITION

### 3.1. Compliance with the Transmission Policy

3.1.1. The Company submits that the PMLTC Tariff Determinations are inconsistent with the Transmission Policy in so far as they provide for indexation of the Tariff Components on a semi-annual basis. In this respect, the Company submits that the Transmission Policy provides:

- (i) in Paragraph (5) of Section G (*Transmission Service Charge*) that “[t]he TSC shall be paid in Pak Rupees and will be indexed for inflation and exchange rate variations on the allowed components of the TSC according to the date and parameters as defined in the bidding documents as specified in Table-I”;
- (ii) in Table 1 (*Tariff Indexation Mechanism for Transmission Line Projects including Grid/Convertor Station (Rupees/kWh)*) that the principal repayment (foreign currency loan) will be indexed and adjusted on a quarterly basis; and
- (iii) that the tariff indexation for interest / mark-up payments against foreign currency loan will be indexed and adjusted on a quarterly basis.

3.1.2. Therefore, the semi-annual indexation and adjustment of the Tariff Components is not in line with the Transmission Policy and the jurisprudence developed by superior courts of Pakistan.

3.1.3. In this regard, the Company refers to Section 31 (*Tariff*) of the NEPRA Act, pursuant to which the Authority shall “in the determination, modification or revision of rates, charges and terms and conditions for the provision of electric power services, be guided by the national electricity policy, the national electricity plan and such guidelines as may be issued by the Federal Government in order to give effect to the national electricity policy and national electricity plan”. The “*national electricity policy*” has been defined under Section 2(xix) of the NEPRA Act as “*the policy approved by the Council of Common Interests and made under Section 14A*”. The Company further refers to clause (5) of Section 14A (*National electricity policy and plan*) of the NEPRA Act, which provides that the Authority “*shall perform its functions in accordance with the national electricity policy and the national electricity plan*”.

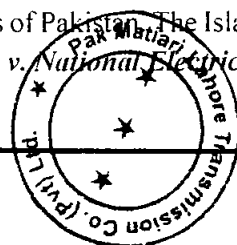
3.1.4. Accordingly, the GOP formulated and announced a comprehensive national power policy and thereafter, the Transmission Policy had been formulated by PPPIB and GOP for facilitating private sector investment in the transmission line projects in Pakistan. It is further submitted that the Transmission Policy also offered fiscal and non-fiscal incentives to the prospective investors, and in this regard, Table 1 of the Transmission Policy contemplated the indexation / adjustment for principal and interest / mark-up payments against foreign currency loans on a quarterly basis. Based on this, the Company submits that indexation of the Tariff Components under the PMLTC Tariff Determinations should follow and be guided by the policy rationale expounded in the Transmission Policy.

3.1.5. In this regard, the Company relies on the precedents developed by the superior courts of Pakistan. The Islamabad High Court held in the case of *Lahore Electric Supply Company Limited (LESCO) v. National Electric Power Regulatory Authority* (2018 PLD 20 1sb) that:

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*“[t]he principles, which can be derived from the above interpretation of the Constitution is that the Constitution of Pakistan confers the power/authority to the Council of Common Interests to regulate and formulate policies for the Federation in relation to a number of subjects including electricity and regulatory bodies. The decision of the Council of Common Interests has the binding/obligatory effect unless the same is modified by the Parliament as provided in Article 154(7) of the Constitution, hence any policy vis-à-vis the electricity and NEPRA formulated by the Council of Common Interests, has a binding effect on the respondent Authority.” [Emphasis Added]*

- 3.1.6. Further, the Company submits that the provisions of policy / guidelines formulated and enacted by GOP cannot be ignored by the Authority unless the same are inconsistent with the provisions of the NEPRA Act. It has been further held by the superior courts that in case the policy / guidelines are not in conformity with the provisions of the NEPRA Act, the Authority shall provide reasons for not following such policy / guidelines. For ease of reference, the relevant extract of the judgement provided by the Islamabad High Court in ***Fatima Energy Limited v. National Electric Power Regulatory Authority*** (2018 CLC Isb 13) is reproduced below:

*“NEPRA has to keep in view the guidelines issued by the Federal Government from time to time and keep the balance as much practicable while making decisions or passing orders otherwise. The guidelines are not per se binding, but also cannot be ignored by NEPRA. If the same are inconsistent with the Act, they shall not be followed at all, however, if they are not, the same are to be applied and followed in order to balance the interests of the consumer and the electric supplier companies... proprietary demands that the reasons for not following the same or the part of Policy/guidelines which are inconsistent with the Act, should be highlighted.” [Emphasis Added]*

- 3.1.7. In view of the foregoing, the Company prays that the Authority may be pleased to allow indexation of Tariff Components on a quarterly basis in line with the Transmission Policy and the superior courts' jurisprudence.

### 3.2. Purpose of Indexation/Adjustment

- 3.2.1. The Company further submits that the reference debt repayment schedule as determined by the Authority within the PMLTC Tariff Determinations and subsequent indexation mechanism to be adopted by the Authority do not follow the mechanism agreed by PMLTC within the Facility Agreement dated November 9<sup>th</sup>, 2018 (“**Facility Agreement**”) and has no direct nexus with actual repayment terms agreed with the lender. In this regard, the Authority may please note the following:

- (i) Reference debt repayment schedule is prepared by the Authority on an amortized cost method instead of linking the same with actual repayment plan agreed by PMLTC with the lenders:
- (ii) NEPRA adopts LIBOR and exchange rate as at 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October of each year, instead of actual reference dates of LIBOR and exchange rate applicable within the Facility Agreement and realized by the Company while making payment to the lender: and
- (iii) Initial debt amount is determined by the Authority based on assessed Project cost instead of actual debt raised by PMLTC for the Project.

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2.2. On the other hand, the Company understands that any indexation mechanism approved by the Authority is designed to mitigate the exchange rate variation risk which a licensee may be exposed to during the operating period of its project. Based on this, rather than indexing the Tariff Components on a bi-annual basis, it is reasonable that PMLTC Final Tariff Determination be modified to the extent that any risk accruing to the Project on account of exchange rate variation or volatility of PKR against USD is minimized and mitigated in order for the Company to recover the cost for Tariff Components prudently whilst meeting the demonstrated needs of its customers.

3.2.3. The Company further notes that given that the indexation parameters are determined in advance for a period, it would be unreasonable that Project tariff and payments thereof are received by the Company based on exchange rate determined six (06) months in advance and the related payment to the lender is made after a period of six (06) months based on the prevailing exchange rate at such later time. Considering the adverse financial implications of indexation of Tariff Components on a semi-annual basis, the Company understands that if the indexation of Tariff Components is allowed on a quarterly basis, it would mitigate the exchange rate variation risk to a reasonable level.

### 3.3. Quarterly Indexation for other CPEC Projects

3.3.1. It is understanding of the Company that the Authority has allowed indexation of Tariff Components on a quarterly basis for various other projects developed under the CPEC framework. In this regard, reference is made to: (i) NEPRA's determination dated July 10, 2015, in the matter of tariff petition filed by China Machinery Engineering Corporation (Power) Private Limited, bearing reference no. NEPRA/TRF-296/CMECPPL-2015/10362-10364; and (ii) NEPRA's determination dated February 12, 2016, in the matter of tariff application filed by China Power Hub Generation Company (Private) Limited, bearing reference no. NEPRA/TR F-342/CPFIGCL-2016/2043-2045 (both (i) and (ii) are herein collectively referred to as "**Tariff Determinations of Other CPEC Projects**").

3.3.2. It is pertinent to highlight here that under the Tariff Determinations of Other CPEC Projects, the Authority has allowed quarterly adjustments/indexations for exchange rate variations and interest rate variations to be made on 1<sup>st</sup> July, 1<sup>st</sup> October, 1<sup>st</sup> January, and 1<sup>st</sup> April each year. Keeping in view the Authority's determinations pursuant to the Tariff Determinations of Other CPEC Projects, it is reasonable that the Authority approves an indexation frequency for Tariff Components of PMLTC's Project, which is also a flagship CPEC project, on a quarterly basis, instead of a bi-annual basis.

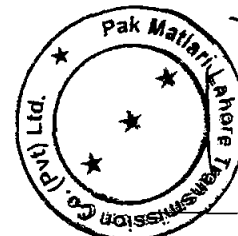


**PRAYER**

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4.1.1. In view of the aforesaid facts and grounds, the Company respectfully prays that the Authority may:

- (i) provide the Company with an opportunity to be heard and to make detailed submissions in respect of the Instant Modification Petition;
- (ii) allow this Instant Modification Petition and modify the PMLTC Final Tariff Determination;
- (iii) approve the indexation of Tariff Components on a quarterly basis; and
- (iv) provide any other relief as the Authority deems fit.



MR. WANG BO, CHIEF FINANCIAL OFFICER

For and on behalf of

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